

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL APPEAL (AGAINST ACQUITTAL) NO. 903 of 2025**

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RAVAL PINALBEN BHARATBHAI

Versus

JITENDRAKUMAR @ JITUBHAI @ KALABHAI RAVAL & ANR.

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Appearance:

MR.JAY S SHAH(7244) for the Appellant(s) No. 1

MR TIRTHRAJ PANDYA, APP for the Opponent(s)/Respondent(s) No. 2

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CORAM: HONOURABLE MR. JUSTICE CHEEKATI

MANAVENDRANATH ROY

and

HONOURABLE MR.JUSTICE D. M. VYAS

Date : 02/09/2025

ORAL ORDER

(PER : HONOURABLE MR. JUSTICE CHEEKATI MANAVENDRANATH ROY)

1. This appeal preferred against the judgment of acquittal dated 17/02/2025 passed in Sessions Case No.83 of 2023 came up before us today for admission.

2. We have heard learned counsel for the appellant at length. We have perused the grounds of appeal and the copy of the judgment of the trial court and the material available on record furnished in the paper-book by the learned counsel for the appellant.

3. The victim is a major and aged about 22 years and she is a grown up woman. She is also a married woman. The first respondent who is the sole accused in the said case is her relative. He is the husband of the younger sister of her mother and he is aged about 39 years. As per the allegations ascribed in the FIR, the accused committed rape on her twice earlier and thereafter after she was married and when all the family members went to Mount Abu that they all have taken alcohol drink and when her husband was unconscious and in intoxicated state that the accused came to her room and had forcible sexual intercourse with her. The said incident took place on 04/02/2023. It is stated that when they were indulged in sexual intercourse in the said room that her husband suddenly came into consciousness and has seen both of them i.e. the prosecutrix and the accused indulging in sexual intercourse. Thereafter, after three months i.e. on 26/05/2023, the FIR came to be lodged.

4. During the course of investigation, the statement of the prosecutrix was recorded under Section 164 of the Criminal Procedure Code (for short 'Cr.P.C') before the learned Magistrate at the instance of the Investigating Officer. In her

statement given before the learned Magistrate under Section 164 Cr.P.C she has categorically stated that she had a love affair with the accused for the last six years prior to the date of recording the said statement.

5. At the culmination of the trial, while appreciating the evidence on record, the learned Sessions Judge found that the prosecutrix is a major aged about 22 years and she is a married woman and her evidence given in the court that the accused had forcible sexual intercourse with her is not correct as she admitted in her Section 164 Cr.P.C. statement that she had a love affair with the accused for the last six years and as such the trial court held that if at all there is any such sexual intercourse between both of them that it is a case of consent and that the sexual intercourse took place with her consent and there is no offence of rape committed on her. Therefore, the trial court recorded a finding of acquittal in favour of the accused.

6. We have carefully gone through the evidence on record and particularly the evidence of the prosecutrix and her Section 164 Cr.P.C. statement and the medical evidence on

record. Upon re-appraisal of the said evidence on record, we absolutely do not find any legal flaw or infirmity in the finding of acquittal recorded by the trial court. Admittedly the prosecutrix is a major and a grown up woman of 22 years. The accused is a married man aged about 39 years. He is none other than the husband of the younger sister of the mother of the prosecutrix. She maintained an affair with him. When earlier there was a sexual intercourse between both of them twice, she did not inform about the incident to any one stating that the accused has committed rape on her. Thereafter she was married. Even after her marriage again she indulged in sexual intercourse with the accused when they all went to Mount Abu when her husband was in an unconscious state on account of taking alcohol drink. When her husband got consciousness and he found both of them indulging in sexual intercourse, their illegal affair was divulged to the husband and his family members. Thereafter the husband has discarded the prosecutrix. After the husband discarded her, the evidence of the prosecutrix show that at the instance of her father that she lodged the FIR by force. These facts clearly show that the prosecutrix had an illegal affair with a married person who is in prohibited relationship

with her being the husband of the younger sister of her mother. It clearly shows that the prosecutrix has indulged in the acts of promiscuity. So, considering the facts and circumstances of the case, it cannot be said under any stretch of reasoning that an offence of rape was committed on her or there was any sexual intercourse committed forcibly on her.

7. Learned counsel for the appellant vehemently contended before us that when the prosecutrix is in the fiduciary relationship with the accused if there is any sexual intercourse between both of them that it still amounts to commission of offence of rape punishable under Section 376(C) of the Indian Penal Code (for short 'the IPC'). The said contention is misconceived and it is absolutely devoid of any merit. She is not in the custody of the accused and the accused has no control over her so as to say that there was any fiduciary relation between them. As noticed supra, she was living with her parents before her marriage and she was in their custody and control and thereafter she was in the custody of her husband and she was in his control. So, when the accused had no relation of any trust where he is legally bound to act in the best interest of the prosecutrix, it cannot

be said that there is any fiduciary relationship between both of them as contended by learned counsel for the appellant. Therefore, no case under Section 376(C) of the IPC is also made out from the facts of the case as contended.

8. As the impugned judgment of acquittal of the trial court is perfectly sustainable under law, it warrants no interference in this appeal. We absolutely do not find any valid legal ground even to admit the appeal for hearing. The facts of the case show that the prosecutrix has launched the prosecution against the accused by grossly abusing the process of law. Therefore the appeal is dismissed summarily under Section 425 of the Bharatiya Nagrik Suraksha Sanhita, 2023.

(CHEEKATI MANAVENDRANATH ROY, J)

(D. M. VYAS, J)

ILA

Original copy of this order has been signed by the Hon'ble Judges.
Digitally signed by: ILA PRAFULKUMAR PATEL(HC00194), Principal Pvt Secretary, at High Court of Gujarat on 04/09/2025 14:17:53